

S.C.C.No.235/2022Nandkumar Phalake Vs.
Jyoti Bhandirge**ORDER BELOW EXH.77.**

1. This is an application moved by the accused for recalling of complainant for cross-examination in view of Section 311 of Code of Criminal Procedure. Perused the application and say. Heard Shri. S. R. Gadhave for accused and Ld. advocate Shri. J. S. Gaikwad for the complainant. Perused record.

2. According to accused, the present case is filed under Section 138 of Negotiable Instruments Act. He closed his evidence by filing pursis vide Exh.70. Thereafter, some material documents such as reply notice send to the complainant by him and its acknowledgment have been received by him from earlier counsel Shri. Budhavale. Actually, those documents i.e., notice and its acknowledgment were in possession of his earlier counsel Shri. Budhavale, R/o. Satara. Now accused got those documents from his earlier counsel Shri. Budhavale, R/o. Satara. Accused contended that, it needs to conduct cross-examination of complainant and other witnesses in respect of those documents i.e., notice and acknowledgment.

3. On the contrary, complainant opposed the present application by filing his say below Exh.70 on grounds that, the present application is filed only in order to protracting the matter. The reasons assigned to the application are not just and proper. On 30.04.2025 statement of accused under Section 313 of Cr.P.C has

been recorded vide Exh.48. However, already sufficient opportunity has been given to accused to examine his witnesses. Hence, complainant prayed to reject the application.

4. On perusal of record it reveals that, now matter is fixed for argument of both side. However, notice dated 09.03.2022 and its acknowledgment dated 11.03.2022 came to be filed by accused after completion of evidence of both sides vide Exh.80/1 and 2. No doubt, accused filed those documents belated stage and he could have agitated and produced those documents at the relevant time of his evidence. But, it is opt to note here that, right now accused received these crucial documents i.e., notice and its acknowledgment from his earlier counsel Shri. Budhavale, R/o.Satara. In fact, all these vital documents were not in possession of accused therefore he could not be produced the same on record at the relevant time of his evidence. Notice and its acknowledgment are material documents and relating with the present case. Therefore, ends of justice opportunity is required to be given to the accused to conduct the cross-examination to the extent of said document i.e., notice dated 09.03.2022 and its acknowledgment 11.03.2022. Hence, in order to effective and complete adjudication of the matter it is necessary to allow application of accused to conduct cross examination of complainant to the extent of documents such as notice and its acknowledgment.

5. Accused in his application has not specifically disclosed names and particulars of his other witnesses to whom he wishes to examine as urged in the application. Therefore, it would not be justifiable to pass order pertaining to the other witnesses of accused

as claimed. As per contention of complainant, accused filed these documents in order to fill up lacuna in this case. However, the reasons assigned to the application appears to be genuine. Therefore, liberty of cross-examination of complainant is necessary to be given to the accused only to that aspect. It would not be prejudiced to the complainant if opportunity to conduct the cross-examination of the complainant gave to the accused. Notice and its acknowledgment are relevant in the present case which would help to ensure a fair determination of a case. Hence, application deserves to be partly allowed. In the result, I proceed to pass following order.

ORDER

1. The application is partly allowed.
2. Issue summons to complainant and it is permitted to the accused to conduct cross-examination of the complainant to the extent of the documents of the notice dated 09.03.2022 and its acknowledgment dated 11.03.2022.
3. Accused to pay cost of Rs.2000/- (Rs. Two Thousand only) to the complainant on or before next date.
4. Rest prayer of accused for examination of other witnesses is hereby rejected.

Date:-17/04/2026.

(Mrs. S.R. Shinde)
J.M.F.C. (1st Court),
Wai.